ORIGINAL

JS 44C/SDNY
REV. 1/2008

CIVIL COVER SHEET

08 CIV 9115

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS	DEFENDANTS
TWIN LANE INC.	BANC OF AMERICA SECURITIES LLC, BANK OF AMERICA CORPORATION, and STEPHEN PELLERITI
ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)	ATTORNEYS (IF KNOWN)
GRAUBARD MILLER 405 Lexington Avenue New York, New York 10174 (212) 818-8800	

OCT 23 2008

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder. Defendants misrepresented that auction rate securities were suitable investments for plaintiff.

Has this or a similar case been previously filed in SDNY at any time? No? [X] Yes? [ ] Judge Previously Assigned _____

If yes, was this case Vol. [ ] Invol. [ ] Dismissed. No [ ] Yes [ ] If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY) NATURE OF SUIT

TORTS

CONTRACT

- [ ] 110 INSURANCE
- [ ] 120 MARINE
- [ ] 130 MILLER ACT
- [ ] 140 NEGOTIABLE INSTRUMENT
- [ ] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- [ ] 151 MEDICARE ACT
- [ ] 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)
- [ ] 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS
- [ ] 160 STOCKHOLDERS SUITS
- [ ] 190 OTHER CONTRACT
- [ ] 195 CONTRACT PRODUCT LIABILITY
- [ ] 196 FRANCHISE

REAL PROPERTY

- [ ] 210 LAND CONDEMNATION
- [ ] 220 FORECLOSURE
- [ ] 230 RENT LEASE & EJECTMENT
- [ ] 240 TORTS TO LAND
- [ ] 245 TORT PRODUCT LIABILITY
- [ ] 290 ALL OTHER REAL PROPERTY

PERSONAL INJURY

- [ ] 310 AIRPLANE
- [ ] 315 AIRPLANE PRODUCT LIABILITY
- [ ] 320 ASSAULT, LIBEL & SLANDER
- [ ] 330 FEDERAL EMPLOYERS' LIABILITY
- [ ] 340 MARINE
- [ ] 345 MARINE PRODUCT LIABILITY
- [ ] 350 MOTOR VEHICLE
- [ ] 355 MOTOR VEHICLE PRODUCT LIABILITY
- [ ] 360 OTHER PERSONAL INJURY

PERSONAL INJURY

- [ ] 362 PERSONAL INJURY - MED MALPRACTICE
- [ ] 365 PERSONAL INJURY PRODUCT LIABILITY
- [ ] 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

PERSONAL PROPERTY

- [ ] 370 OTHER FRAUD
- [ ] 371 TRUTH IN LENDING
- [ ] 380 OTHER PERSONAL PROPERTY DAMAGE
- [ ] 385 PROPERTY DAMAGE PRODUCT LIABILITY

ACTIONS UNDER STATUTES

CIVIL RIGHTS

- [ ] 441 VOTING
- [ ] 442 EMPLOYMENT
- [ ] 443 HOUSING/ ACCOMMODATIONS
- [ ] 444 WELFARE
- [ ] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT
- [ ] 446 AMERICANS WITH DISABILITIES -OTHER
- [ ] 440 OTHER CIVIL RIGHTS

PRISONER PETITIONS

- [ ] 510 MOTIONS TO VACATE SENTENCE 28 USC 2255
- [ ] 530 HABEAS CORPUS
- [ ] 535 DEATH PENALTY
- [ ] 540 MANDAMUS & OTHER
- [ ] 550 CIVIL RIGHTS
- [ ] 555 PRISON CONDITION

FORFEITURE/PENALTY

- [ ] 610 AGRICULTURE
- [ ] 620 OTHER FOOD & DRUG
- [ ] 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- [ ] 630 LIQUOR LAWS
- [ ] 640 RR & TRUCK
- [ ] 650 AIRLINE REGS
- [ ] 660 OCCUPATIONAL SAFETY/HEALTH
- [ ] 690 OTHER

LABOR

- [ ] 710 FAIR LABOR STANDARDS ACT
- [ ] 720 LABOR/MGMT RELATIONS
- [ ] 730 LABOR/MGMT REPORTING & DISCLOSURE ACT
- [ ] 740 RAILWAY LABOR ACT
- [ ] 790 OTHER LABOR LITIGATION
- [ ] 791 EMPL RET INC SECURITY ACT

IMMIGRATION

- [ ] 462 NATURALIZATION APPLICATION
- [ ] 463 HABEAS CORPUS-ALIEN DETAINEE
- [ ] 465 OTHER IMMIGRATION ACTIONS

ACTIONS UNDER STATUTES

BANKRUPTCY

- [ ] 422 APPEAL 28 USC 158
- [ ] 423 WITHDRAWAL 28 USC 157

PROPERTY RIGHTS

- [ ] 820 COPYRIGHTS
- [ ] 830 PATENT
- [ ] 840 TRADEMARK

SOCIAL SECURITY

- [ ] 861 HIA (1395ff)
- [ ] 862 BLACK LUNG (923)
- [ ] 863 DIWC/DIWW (405(g))
- [ ] 864 SSID TITLE XVI
- [ ] 865 RSI (405(g))

FEDERAL TAX SUITS

- [ ] 870 TAXES (U.S. Plaintiff or Defendant)
- [ ] 871 IRS-THIRD PARTY 26 USC 7609

OTHER STATUTES

- [ ] 400 STATE REAPPORTIONMENT
- [ ] 410 ANTITRUST
- [ ] 430 BANKS & BANKING
- [ ] 450 COMMERCE
- [ ] 460 DEPORTATION
- [ ] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
- [ ] 480 CONSUMER CREDIT
- [ ] 490 CABLE/SATELLITE TV
- [ ] 810 SELECTIVE SERVICE
- [X] 850 SECURITIES/ COMMODITIES/ EXCHANGE
- [ ] 875 CUSTOMER CHALLENGE 12 USC 3410
- [ ] 890 OTHER STATUTORY ACTIONS
- [ ] 891 AGRICULTURAL ACTS
- [ ] 892 ECONOMIC STABILIZATION ACT
- [ ] 893 ENVIRONMENTAL MATTERS
- [ ] 894 ENERGY ALLOCATION ACT
- [ ] 895 FREEDOM OF INFORMATION ACT
- [ ] 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
- [ ] 950 CONSTITUTIONALITY OF STATE STATUTES

W070 72

Check if demanded in complaint:

[ ] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND $_____ OTHER _____ JUDGE _____ DOCKET NUMBER_____

Check YES only if demanded in complaint
JURY DEMAND: [ ] YES [X] NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY) **ORIGIN**

☒ 1 Original Proceeding ☐ 2a. Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judge Judgment

☐ 2b. Removed from State Court AND at least one party is pro se.

(PLACE AN x IN ONE BOX ONLY) **BASIS OF JURISDICTION** ***IF DIVERSITY, INDICATE CITIZENSHIP BELOW. (28 USC 1322, 1441)***

☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☐ 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

	PTF	DEF		PTF	DEF		PTF	DEF
CITIZEN OF THIS STATE	[ ] 1	[ ] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	[ ] 3	[ ] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	[ ] 5	[ ] 5
CITIZEN OF ANOTHER STATE	[ ] 2	[ ] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ] 4	[ ] 4	FOREIGN NATION	[ ] 6	[ ] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

TWIN LANE INC.
19 Stoney Brook Drive
Wilton, New Hampshire 03086
Hillsborough County

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

100 Federal Street
Boston, MA 02110
Suffolk County

DEFENDANT(S) ADDRESS UNKNOWN
REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN
(DO NOT check either box if this a PRISONER PETITION.)

DATE SIGNATURE OF ATTORNEY OF RECORD

Edward H. Pomeranz

RECEIPT # Edward H. Pomeranz

ADMITTED TO PRACTICE IN THIS DISTRICT
[ ] NO
[X] YES (DATE ADMITTED Mo. 12 Yr. 1987)
Attorney Bar Code # EP:8936

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge MAAS is so Designated.

J. Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

ORIGINAL

Edward H. Pomeranz (EP:8936)
GRAUBARD MILLER
The Chrysler Building
405 Lexington Avenue
New York, NY 10174
(212) 818-8800
epomeranz@graubard.com

JUDGE KAPLAN

08 CIV 9115

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TWIN LANE INC.,		
Plaintiff,	:	Case No.
v.	:	**COMPLAINT**
BANC OF AMERICA SECURITIES LLC, BANK OF AMERICA CORPORATION and STEPHEN PELLERITI,	:	
Defendants.	:	

FILED
U.S. DISTRICT COURT
2008 OCT 23 PM 4:16

INTRODUCTION

1. Plaintiff Twin Lane Inc. ("Twin") sought and relied on defendants' advice regarding purchasing short term money market type investments that would provide complete liquidity with little market risk.

2. Defendants recommended that Plaintiff purchase auction rate securities ("ARSs").

3. To induce Plaintiff to purchase ARSs, defendants misrepresented that they were equivalent to cash or money market funds and were highly liquid, safe short-term investments.

4. Defendants knew, yet failed to disclose the following:

- ARSs were not suitable alternatives to investments such as money market funds and were not safe, liquid, short-term cash equivalents that were virtually risk-free;

- ARS's continuing liquidity was very uncertain, even at the time of sale of the specific securities at issue, because they depended substantially, if not completely, on Defendants' artificially supporting the ARS market to maintain the appearance of liquidity and stability. ARSs were only liquid (easily bought and sold with minimal value loss) as long as the market thrived;

- There was no real market for ARSs without Defendants' and other broker-dealers' constant and pervasive support and propping up of these auctions by serving as buyers of last resort for these securities to maintain the appearance of liquidity and stability and to prevent failed auctions at which the securities cannot be sold;

- At the time they were inducing Plaintiff to purchase ARSs, Defendants knew they were going to withdraw their support for the periodic auctions, which would cause a complete market failure such that the securities could not be sold; and

- These securities would and did become illiquid as soon as Defendants withdrew their routine and pervasive support for the ARS market when they completely stopped purchasing the securities at auction.

5. Indeed, on February 13, 2008, almost 90% of all ARS auctions failed because defendants and all other major broker-dealers suddenly ceased all support, for these auctions and the ARS market. As a result of such withdrawal of support the ARS market collapsed, leaving Plaintiff with no means of liquidating the securities which had been pitched as safe, highly liquid cash equivalents.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337, and Section 27 of the Exchange Act (15 U.S.C. § 78aa). The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder by the Securities Exchange Commission ("SEC") (17 C.F.R. 240.10b-5).

7. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. §§ 1391(b) and 1337. Defendants do substantial business in this District and the parties' agreement provides for venue in this District.

8. In connection with the acts alleged in this Complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

PARTIES

9. Plaintiff Twin is a Delaware corporation with its principal place of business at 19 Stoney Brook Drive, Wilton, New Hampshire.

10. Plaintiff purchased ARSs that were marketed, sold and/or underwritten by Defendants Banc of America Securites, LLC ("BAS") and Bank of America Corporation ("BAC").

11. Defendant BAS is incorporated in Delaware and its principal executive offices are located in Charlotte, North Carolina. BAS is one of the world's leading financial services firms and conducts substantial business within this District.

12. BAS is registered with the SEC as a broker-dealer pursuant to Section 15(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and is a member of the New York Stock Exchange ("NYSE") and the Financial Industry Regulatory Authority ("FINRA"). BAS is a wholly owned subsidiary of BAC and conducts substantial business within this District.

13. Defendant BAC is a Delaware corporation headquartered in Charlotte, North Carolina. BAC is a bank holding company and a financial holding company registered under the Gramm-Leach-Bliley Act and conducts substantial business within this District. Through its subsidiaries, BAC provides a diverse range of banking and nonbanking financial services and products throughout the United States.

14. As set forth in Plaintiff's account agreement, BAC protects the net equity of BAS's client accounts in the event of the broker-dealer's insolvency pursuant to a guarantee to BAS from BAC.

15. Unless specifically noted, "Bank of America" refers collectively to defendants BAS and BAC.

16. Upon information and belief, Defendant Stephen Pelleriti is a broker employed by Bank of America.

Background

17. In or about August of 2007, Twin was recapitalized and restructured into a new entity called QA Master Holdings. Plaintiff contributed all of its assets to QA Master Holdings and became a shareholder in that new entity. The recapitalization generated significant cash distributions to Plaintiff.

18. Plaintiff sought a short term investment for such cash, a subtantial portion of which it would soon need to pay its tax obligations created by the restructuring. Plaintiff also desired a short term investment while it determined a longer term investment strategy for such funds.

19. In September of 2007, Twin's broker at Bank of America, Stephen Pelleriti ("Pelleriti"), advised Thomas Schulhof ("Schulhof") and Hilary Jandl ("Jandl"), Twin's Chairman and Chief Financial Officer respectively, to invest the monies in ARS student loan bond funds which were backed by the Department of Education.

20. Schulhof and Jandl informed Pelleriti that they wanted an investment which would be completely liquid and safe and he advised both of them that ARSs were very safe short term investments.

21. Pelleriti induced Plaintiff to invest in ARSs which would earn interest at a higher rate than money markets, certificates of deposits, or other equally safe securities and were triple A rated and therefore a safe investment.

22. Pelleriti stressed that ARS student loan based funds were no risk short-term investments whose interest rates were re-set either weekly or monthly. Although Pelleriti did not explain the intricacies of the auction process, he maintained that there was always a market for such securities.

23. Pelleriti also told Schulof and Jandl that there has never been a default or auction failure in the student loan ARS market.

24. Pelleriti compared the ARSs to money markets in the sense that they were just as liquid and were a very safe investment.

25. Pelleriti's representations regarding the safety and liquidity of ARSs induced Plaintiff to purchase such securities.

26. In reliance on Pelleriti's advice, Twin purchased $30,400,000 of various ARSs between September and December of 2007, which it continues to own.

27. In purchasing the ARSs, Plaintiff relied on the following representations:

- ARSs were AAA rated and therefore safe investments;
- ARSs were liquid and could be easily sold when they needed cash;
- There was always a market for these securities; and
- ARSs were similar to money market funds, and other cash equivalents.

28. Plaintiff never received any prospectus or other written information about ARSs from Pelleriti or Defendants.

29. Due to the collapse of the ARS market in February 2008, Plaintiff is unable to liquidate the remaining ARSs it purchased at Defendants' recommendation, whose interest rates have been reset at low penalty rates. Twin needs access to its funds in order to pay the taxes owed to the Internal Revenue Service and will now have to liquidate other assets for that purpose.

The ARS Market

30. The term "auction rate security" refers to either municipal or corporate debt securities or preferred stocks which pay interest at rates that are re-set at periodic "auctions." The auctions occur every 7, 14, 28 or 35 days and interest is paid at the end of the auction period. ARSs typically priced and traded as short-term securities and thus, could be sold at these periodic auctions.

31. ARSs generally have long-term maturities, typically 30 years, and in the case of preferred stocks, no maturity date.

32. ARSs were auctioned at par value, so the return on the investment to the investor and the cost of financing to the issuer were determined by the interest rate or dividend yield set through the auction.

33. The auction itself was commonly referred to as a "Dutch" auction, in which sequentially increasing bids are accepted until all of the securities at auction are sold. Initial rates are reportedly set low, and then increased to be more attractive to purchasers throughout the course of the auction.

34. The final rate at which the securities are sold at an auction is called the "clearing rate" and applies to all of the securities in the auction until the next auction. The clearing rate was determined by finding the lowest rate bid which was sufficient to cover all of the securities for sale in the auction. If several bidders had bids at the clearing rate, and there were more bids than shares, the shares were divided pro-rata between the clearing rate bidders. The auction agent, at the end of the auction, allocated the shares per the formula. If all of the current holders decided to hold their securities, then the auction was an "all-hold" auction and the rate was set at a penalty rate, which was generally lower than the market rate.

35. If there are not enough orders to purchase all the shares being sold at the auction, the auction failed. The rate was then set to a relatively low penalty rate which was a multiplier of a short-term benchmark such as the London Interbank Offered Rate.

Bank of America Materially Misrepresented the Nature and Risks Associated with ARS Investments

36. ARSs were extremely profitable for Bank of America and the brokers who sold them. As a large underwriter of ARSs, Bank of America received significant underwriting fees from the issuers of these securities. As one of the largest broker-dealers, Bank of America also entered into broker-dealer agreements with the issuers and was paid an annualized broker-dealer fee for operating the auction process. Bank of America also acted as a principal for its own account and bought and sold ARSs.

37. Defendants concealed the true nature of the ARS market, as described herein, because it had a strong financial interest in promoting the sale of ARSs.

38. Bank of America and Pelleriti failed to disclose to Plaintiff material facts about these securities. Pelleriti did not inform Twin that these securities were not cash alternatives, like money market funds, and were instead, complex, long-term financial instruments with 30 year maturity dates, or no maturity dates. Indeed, Plaintiff specifically told Pelleriti that it wanted and needed easy access to its funds.

39. Bank of America and Pelleriti failed to disclose that the ARSs they induced Plaintiff to buy were only liquid because Bank of America and other broker-dealers in the auction market were artificially supporting and manipulating the market by acting as bidders of last resort and buying ARSs to avoid failed auctions. In fact, Plaintiff's ability to liquidate its holdings depended on the maintenance of an artificial auction market by BAS and the other broker-dealers.

40. Bank of America and Pelleriti knew, at the time they were selling ARSs to Plaintiff, yet failed to disclose to Plaintiff, that BAS and/or BAC might no longer participate in auctions and purchase ARSs which would and did cause the ARS market to

collapse. Had Plaintiff known there was a substantial risk that it would not be able to sell its securities, it never would have purchased them.

41. Upon information and belief, Bank of America and Pelleriti knew, at the time they were inducing Plaintiff to purchase ARSs, that they might not support the auction market and that when Bank of America pulled its support, the ARS market would collapse.

42. In February of 2008, when Bank of America and the other broker-dealers stopped artificially supporting and manipulating the auction market, the market immediately collapsed and Plaintiff has been unable to sell its ARSs.

43. Bank of America and Pelleriti knew of the risk of Plaintiff's investment, or should have known before it was too late to take action. Yet, they did nothing to help Plaintiff sell its securities and encouraged it to buy more.

44. Bank of America also failed to disclose material facts about its role in the auctions and the auction market in which these securities were traded, i.e., that Bank of America acted simultaneously on behalf of the issuer, who had an interest in paying the lowest possible interest rate, on behalf of Planitiff, who was seeking the highest possible return, and on its own behalf, to maximize the return to Bank of America on its holdings of ARSs. Bank of America failed to disclose that it and other broker-dealers routinely intervened in auctions for their own benefit, to set rates and prevent all-hold auctions and failed auctions.

45. Indeed, Bank of America failed to inform Plaintiff that without this manipulation of the auction market, many auctions likely would fail. Thus, Plaintiff had

no ability to determine the true risk and liquidity features of ARSs and relied on the misrepresenations made by Bank of America.

46. Plaintiff would not have purchased the ARSs if it knew the following:

- The auctions, at which it could sell such securities, could fail if there were not enough purchasers;
- In the past, Bank of America prevented auctions from failing by buying ARSs if there were not enough buyers. In the event Bank of America did not bid at the auctions, however, they would fail. Thus, Bank of America controlled the liquidity of the ARS market;
- In the event of a failed auction, Plaintiff would be unable to liquidate its investment;
- Bank of America planned on withdrawing its support for the ARS market and knew it would no longer purchase ARSs which might cause the complete failure of the auctions and the market to collapse; and
- ARSs were not cash alternatives, like money market funds, but were long term investments subject to extreme liquidity risk.

The Collapse of the ARS Market

47. In the summer of 2007, some ARS auctions backed by sub-prime debt began to fail, representing a small percentage of the entire market. In late 2007, more auctions began to fail. Bank of America was well aware of such failed auctions, yet did not disclose that fact or even such possibility to Plaintiff. Bank of America and Pelleriti, knew, but also did not disclose to Plaintiff, the consequences of a failed auction - - that it would be unable to sell its securities and its investment would be illiquid.

48. Even though some of the auctions that failed initially were conducted by Bank of America, it encouraged Plaintiff to purchase ARSs and represented that they

were the same as cash or money markets and were highly liquid, safe investments for short-term investing, without any disclosure of any risks.

49. On February 13, 2008, 87% of all ARS auctions failed when all of the major broker-dealers, including Bank of America, refused to continue to support the auctions.

50. On February 14, 2008, it was disclosed that UBS, the second largest underwriter of auction rate securities, had decided to no longer support the auction market. Virtually every other major broker-dealer, including Goldman Sachs, Lehman Brothers, Citigroup and Bank of America, among others, also decided to withdraw their support of the auction market. As a result, the ARS market collapsed, rendering Plaintiff's investment in the securities illiquid.

51. At all relevant times, the material misrepresentations and omissions particularized herein directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff. As described herein, Bank of America and Pelleriti made a series of materially false or misleading statements about securities and the ARS market. Defendants' materially false and misleading statements caused Plaintiff to purchase and continue to hold the ARSs, when it otherwise would not have bought them in the first place or would have liquidated such investment upon learning of the true and precarious nature of the market.

Plaintiff Suffered Economic Loss

52. Bank of America engaged in a scheme and course of conduct to induce Plaintiff to purchase ARSs by misrepresenting the liquidity of, and risks associated with, such an investment. In complete disregard for Plaintiff's investment criteria, Defendants

made false and misleading statements about the nature of the securities by assuring Plaintiff that ARSs were safe, liquid, risk-free investments similar to cash equivalents such as money market funds.

53. As soon as Defendants stopped supporting the ARS market, it collapsed and Plaintiff's ARSs became illiquid. As a result of its purchases of ARSs from Bank of America, Plaintiff has suffered economic loss, i.e., damages under the federal securities laws in that the securities have substantially less value than that represented by defendants and are now illiquid.

COUNT I

Violation Of Section 10(b) Of The Exchange Act Against All Defendants

54. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

55. Defendants carried out a plan, scheme and course of conduct which was intended to and did deceive Plaintiff and cause it to purchase ARSs when it otherwise would not have invested in such securities. In furtherance of this unlawful scheme, plan and course of conduct, defendants, jointly and individually (and each of them) took the actions set forth herein.

56. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon Plaintiff in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated

thereunder. Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

57. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the ARSs it sold.

58. Defendants employed devices, schemes and artifices to defraud and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure Plaintiff that the ARSs it sold were the same as cash and were highly liquid, safe short-term investment vehicles suitable for its objectives.

59. Defendants knew their representations to Plaintiff were false when made and acted with deliberate disregard for the truth in failing to disclose the true nature of ARSs and the precariousness of the auction market. Such material misrepresentations and/or omissions were done knowingly or deliberately and for the purpose and effect of concealing the truth about the liquidity of and risks associated with ARSs and supporting the market for these securities.

60. Plaintiff relied on Defendants' false and misleading statements and purchased over $30 million worth of ARSs.

61. At the time of said misrepresentations and omissions, Plaintiff was ignorant of their falsity, and believed them to be true. Had Plaintiff known the truth regarding the illiquidity of and risks associated with ARSs, which were not disclosed, it would not have purchased ARSs in the first place and would not have continued to hold such securities.

62. By virtue of the foregoing, defendants have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

63. As a direct and proximate result of defendants' wrongful conduct, Plaintiff has been damaged.

COUNT II

Violation Of Section 20(a) Of The Exchange Act Against Defendant Bank of America Corporation

64. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

65. BAC acted as a control person of BAS within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of its 100% ownership of BAS, BAC had the power to influence and control and did influence and control, directly or indirectly, the decision-making by BAC including the content and dissemination of the various statements which Plaintiff contends are false and misleading. BAC was provided with or had unlimited access to copies of the reports, press releases, public filings and other statements alleged to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

66. As set forth above, BAS violated Section 10(b) and Rule 10b-5 by its acts and omissions as alleged in this complaint. By virtue of its position as a controlling person, BAC is liable pursuant to Section 20(a) of the Exchange Act.

67. As a direct and proximate result of defendants' wrongful conduct, Plaintiff suffered damages in an amount to be determined at trial.

COUNT III

Fraud Against All Defendants

68. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

69. As set forth herein, Defendants made numerous material misrepresentations to Plaintiff with knowledge of their falsity, and/or knowinginly and intentionally omitted to inform Plaintiff of material information with the intention of inducing Plaintiff to rely thereon.

70. Plaintiff reasonably relied upon Defendants' misrepresenations and purchased ARSs.

71. As a direct and proximate result of defendants' wrongful conduct, Plaintiff suffered damages in an amount to be determined at trial.

COUNT IV

Negligent Misrepresntation Against All Defendants

72. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

73. Defendants affirmatively misrepresented that the ARSs it sold were both safe and liquid.

74. Defendants never warned Plaintiff that the securities were subject to extreme liquidity risk. They also never explained that the reason ARS auctions had not failed in the past was because they invested their own capital in order to prevent failed auctions.

75. Defendants never revealed that they could control the liquidity of the ARS investments.

76. Defendants had a duty to recommend investments that were consistent with Plaintiff's investment objectives, which they knew to be safe, liquid and short term. Yet, Defendants recommended and sold ARSs to Plaintiff that subjected its assets to illiquidity and potential loss.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

A. Awarding Plaintiff compensatory damages in an amount to be determined at trial, including interest thereon;

B. In the alternative, rescinding the transactions complained of in Counts I and II herein and entering judgment for Plaintiff in the amount of the consideration paid for the ARSs currently owned by Plaintiff, together with prejudgment interest;

C. Awarding Plaintiff punitive damages with respect to Count III;

D. Awarding Plaintiff its reasonable costs and expenses incurred in this action, including attorneys' fees, expert fees and other costs and disbursements; and

E. Such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 21, 2008

Respectfully submitted,

GRAUBARD MILLER

By: _____

Edward H. Pomeranz (EP:8936)
The Chrysler Building
405 Lexington Avenue, 19th Floor
New York, NY 10174
(212) 818-8800
Attorneys for Plaintiff